IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

OP.No. 8933 of 2003(L)

PETITIONER:

MUHAMMED IRSHAD B., ASSISTANT ENGINEER (CIVIL) ENGINEERING DIVISION, KERALA AGRICULTURAL UNIVERSITY, PANANGAD P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.V.VARGHESE
SMT.RESMI G. NAIR

RESPONDENTS:
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1. **KERALA AGRICULTURAL UNIVERSITY REPRESENTED BY ITS REGISTRAR, KERALA AGRICULTURAL UNIVERSITY P.O., VELLANIKKARA, THRISSUR DISTRICT.**

2. **K.V.RAMANUNNI, ASSISTANT EXECUTIVE ENGINEER (CIVIL) ENGINEERING SUB DIVISION, KERALA AGRICULTURAL UNVERSITY, KERALA AGRICULTURAL UNIVERSITY P.O., VELLANIKKARA, THRISSUR DISTRICT.**

OP. NO.8933/2003

ADDL. R3 IMPLEADED.

3. VIJAYAKUMARI. M.,
ASSISTANT ENGINEER (HR.GRADE-I),
ENGINEERING DIVISION, K.L.A.E & T, THAVANOOR,
MALAPPURAM DISTRICT.NON RESIDING AT
'AYSWARYA',THENGUMOOCHI, VELLANIKKARA,
THRISSUR DISTRICT.
IS IMPLEADED AS PER ORDER DT. 24.3.04 IN IA. NO.4249/2004.

ADDL. R4 IMPLEADED

4. SALI C.I., ASST. ENGINEER,
ENGINEERING SUB DIVISION,
KERALA AGRICULTURAL UNIVERSITY,
THRISSUR DISTRICT.

ADDL. R4 IS IMPLEADED AS PER ORDER DT. 26.10.2007 IN CMP. 19782/2003.

BY ADV. SMT.P.JAYA, SC, AGRL. UNIVERSITY
DR.K.P.KYLASANATHA PILLAY
SMT.SREEDEVI KYLASANATH
SRI.M.K.DILEEP KUMAR
SRI.SIBY MATHEW
SMT.ANNIE PAUL
SMT.LAKSHMI.V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.8933/2003

ORDER ONCMP. NO.15533/2034 IN OP. NO.8933/2003

DISMISSED

26.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.GA/A3/17890/94 DT. 1.7.97 OF THE IST RESPONDENT.

EXT.P2:- COPY OF THE B.TECH DEGREE CERTIFICATE DT. 28.10.98 ISSUED BY THE UNIVERSITY OF CALICUT TO THE PETITIONER.

EXT.P3:- COPY OF THE CIRCULAR NO.GA/A3/7318/2000 (ii) DT. 14.6.2000 OF THE IST RESPONDENT.

EXT.P3(a):- COPY OF THE RELEVANT EXTRACT OF THE APPENDED SENIORITY LIST OF ENGINEERING STAFF OF THE UNIVERSITY AS ON 1.1.2000.

EXT.P4:- COPY OF THE GOVERNMENT NOTIFICATION NO.64546/P5/76/AD DT. 23.10.76.

EXT.P5:- COPY OF THE ORDER NO.GA/J1/20464/99 DT. 15.4.2000 OF THE IST RESPONDENT.

EXT.P6:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DT. 1.7.02.

EXT.P7:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DT. 18.11.02.

EXT.P8:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DT. 11.2.03.

EXT.P9:- COPY OF THE JUDGMENT IN OP. NO.8603/01 OF THIS HONOURABLE COURT.

EXT.P10:- COPY OF THE JUDGMENT IN WA. NO.3783/02 OF THIS HONOURABLE COURT.

OP. NO.8933/2003

EXT.P11:- COPY OF THE ORDER NO.A3/2528/02 DT. 16.11.02 OF THE DIRECTOR OF PHYSICAL PLANT, KERALA AGRICULTURAL UNIVERSITY.

EXT.P11:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE IST RESPONDENT DT. 29.12.03. (IA. NO.2063/2004)

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE GOVERNMENT ORDER NO.16700/AF2/01 AD DT. 2.11.02.

EXT.R2(a):- COPY OF THE JUDGMENT DT. 12.8.02 IN OP. 21859/97.

EXT.R2(b):- COPY OF THE AMENDED SPECIAL RULES IN NOTIFICATION NO.GA/E3/44574/87(i) DT. 16.8.03.

EXT.R3(a):- COPY OF THE RELEVANT EXTRACT OF PROVISIONAL SENIORITY LIST.

EXT.R3(b):- COPY OF THE NOTIFICATION NO.38,DT. 30.9.03.

EXT.R3(c):- COPY OF THE ORDER DT. 26.4.04 PROMOTING THE 3RD RESPONDENT AS ASST. EXECUTIVE ENGINEER.

EXT.R3(d)(i):- COPY OF THE ORDER IMPOSING BAN ON MAKING PROMOTION DT. 19.11.03.

EXT.R3(d)(ii):- COPY OF THE ORDER IMPOSING BAN ON MAKING PROMOTION DT. 16.5.02.

EXT.R3(e):- COPY OF THE LETTER DT. 2.11.02 ISSUED BY THE GOVERNMENT OF KERALA.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.8933 of 2003-L

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Dated this the 26th day of October, 2007.

JUDGMENT

1. The second respondent, an admitted senior of the petitioner was promoted on the date of occurrence of a particular vacancy of AEE. Such promotion was made on 15-4-2000. Thereafter, the petitioner acquired the qualification on 1-7-2002, while the second respondent continued to remain unqualified. This means that the petitioner was entitled to be promoted as AEE with effect from 1-7-2002. This position is supported by the judgments rendered by this Court, Exts.P9 and P10. The second respondent has since retired from service. Therefore, the question of determining whether he should be permitted to continue in that post does not arise.

2. For the aforesaid reasons, this writ petition is allowed directing that the first respondent shall issue orders promoting the petitioner as AEE(Civil) with effect from 1-7-2002 with all attendant benefits. The consequential orders shall be issued and monetary benefits, if any, made available within an outer limit of three months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.8933 of 2003-L

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JUDGMENT

Dated: 26th October, 2007.